

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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FEDERAL
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WASHINGTON, D.C. 20554

In the Matter of:

**Grandfathered Short-Spaced
FM Stations**

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MM Docket No. 96-120

RM-7651

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To: The Commission - Mail Stop 1170

COMMENTS OF TAXI PRODUCTIONS, INC.

1. Introduction. Taxi Productions, Inc. ("Taxi") hereby submits these comments in response to the Commission's *Notice of Proposed Rule Making* ("NPRM") in the above-captioned proceeding, FCC 96-236, released June 14, 1996. Taxi is the licensee of Station KJLH(FM), Compton, California. KJLH is a pre-1964 grandfathered FM station which is short-spaced under Section 73.207(b) with, and in fact has its transmitter located inside the 1 mV/m contour of, two second-adjacent channel Class B stations.^{1/} KJLH operates on Channel 272A and is short-spaced to Stations KSCA(FM), Channel 270B, Glendale, California, and KIIS(FM), Channel 274B, Los Angeles, California. As KJLH is a pre-1964 grandfathered short-spaced FM station, Taxi has an interest in this proceeding, particularly with regard to the proposal to eliminate the second and third-adjacent channel spacing requirements for grandfathered short-spaced stations, which have prevented KJLH from operating with the normal 6 kW power limit for Class A stations, while requiring it to live sandwiched in between the signals of two "super-powered" Class B stations. Taxi urges the Commission to recognize that retention of the second and third-adjacent channel spacing

^{1/} The KJLH situation is sometimes referred to as a "donut" case.

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requirements is unnecessary, inequitable, and contrary to the public interest, especially when it has such a severe adverse impact on grandfathered Class A stations like KJLH.

Accordingly, the Commission should adopt its proposal to eliminate the second and third-adjacent channel spacing requirements for grandfathered short-spaced stations.

2. Background. Under Section 73.213 of the Rules as now in force, KJLH is prohibited from extending its 1 mV/m toward the 1 mV/m contour of either of KSCA or KIIS, as they are short-spaced second-adjacent channel stations. Because the KJLH transmitter lies within the 1 mV/m contours of both of those stations, the existing rules effectively prevent any improvement at all in KJLH's facilities in any direction. To make matters worse, both of the adjacent stations are "super power" stations, operating with facilities substantially in excess of normal Class B limits. KJLH, on the other hand, operates with only the equivalent of 3 kW ERP at 91 meters HAAT.^{2/} which is less than half of the normal Class A maximum. KJLH competes with a large number of super-powered Class B stations in the greater Los Angeles market, which is the nation's second largest market. One of these competitors -- which is one of the super power stations short-spaced to KJLH -- has twice been authorized to increase power above the normal Class B limit.^{3/} Meanwhile, KJLH, Class A minority-owned station serving a predominantly minority-populated city of license with minority-oriented programming, has been unable to upgrade its facilities to even

^{2/} The HAAT equivalent of 91 rather than 100 meters is necessary because of Mexican treaty limitations. The station's actual facilities are 2.25 kW at 103 meters AAT.

^{3/} That station is KSCA, licensed to Golden West Broadcasters, Inc. See *Golden West Broadcasters, Inc.*, 4 FCC Rcd 2097 (1989), and 11 FCC Rcd. 3377 (1995).

the normal maximum for its class, despite a four-year effort involving numerous pleadings.^{4/} Taxi has frankly been appalled that the Commission has allowed this injustice to happen.

3. The Commission's Proposal. As noted in the NPRM, the existing second-adjacent-channel and third-adjacent-channel protection was originally included in the Rules as a safeguard to be consistent with the general separation requirements applicable to non-grandfathered stations under to Section 73.207. NPRM at ¶17. The Joint Petitioners^{5/} pointed out that in cases involving grandfathered stations on second- or third-adjacent channels located inside the 1 mV/m contour of short-spaced stations, any move by either station would always be prohibited, because it would extend the applicant's 1 mV/m contour in the direction of the other station's 1 mV/m contour. As previously stated, KJLH is affected in just this way.^{6/} and it has been left hanging while the rule has been waived twice for KSCA.

4. The purpose in adopting the short-spaced rules was to protect against the risk of interference between adjacent-channel stations. NPRM at ¶17. However, as the NPRM recognizes, second-and third-adjacent channel interference occurs in only a small area around

4/ Taxi's application, File No. BPH-920731IH, has been pending for four years without Commission action. The other second-adjacent super-power station, KIIS-FM, filed an objection, thus invoking the *ex parte* rules and preventing Taxi from pleading its case in person. In fact, the Commission has refused to allow Taxi's owner to meet with Commission officials to discuss even minority ownership problems generally.

5/ This term refers to the petitioners for rule making whose petition led to the initiation of this proceeding.

6/ Taxi requested a waiver of Section 73.213(a) in conjunction with its pending application to increase ERP, cited at fn. 4, *supra*.

the transmitter site of the station causing the interference. NPRM at ¶19 and ¶24. As Taxi noted in its waiver petition for KJLH, the proposed increase in theoretical interference to the short-spaced stations in its case would be *de minimis*. Taxi's engineering exhibit demonstrated that a power increase by KJLH would extend the existing contours only 0.34 km and 0.2 km toward the two short-spaced stations, encompassing only 1.3 sq. km/1591 persons and 0.5 sq. km/106 persons respectively -- less than two hundredths of one percent and one hundredth of one percent of the populations within the primary service area of the short-spaced stations.

5. The Commission and the Joint Petitioners also pointed out that any second- or third-adjacent channel interference that may arise would normally fall in lightly populated areas and be localized in the immediate area of the transmitter. NPRM at ¶19 and ¶24. Once again, in KJLH's case, that is true. In KJLH's modification application, Taxi pointed out that because the adjacent-channel stations are super-powered and thus place very strong signals over the KJLH transmitter site, the likelihood of either of those stations losing listeners is very small. In addition, the area surrounding the transmitter site, which would be that most affected by an increase in power, is occupied by oil wells rather than places where radio listeners are likely to be located. Moreover, in KJLH's case, even if new interference occurred, it would likely fall within KJLH's blanketing contour, and KJLH would be responsible for satisfying interference complaints in any case under Section 73.318(b). Nevertheless, despite the lack of harm, the Commission has so far declined to waive the rule.

6. The KJLH situation demonstrates why grandfathered stations -- especially Class A stations -- should be permitted to modify their facilities without regard to grandfathered

second- and third-adjacent channel stations. As the Commission notes, there are only a limited number of such stations that would be affected by such a rule change; and the number of instances where any interference would occur, if any at all, would be minimal. However, the opportunity to provide improved service to the community of license would be great. KJLH is a minority-owned station which serves a predominantly minority community with a minority-oriented format.^{7/} The station is an integral part of the minority community. However, due to Taxi's inability to modify KJLH's facilities, it is unable to serve a substantial portion of the minority population it seeks to reach.

7. Taxi's request for a rule waiver has languished for four years, with no good reason given the insignificant likelihood of any interference if a power increase were granted. The impact of this delay has been especially damaging to KJLH, both because it is only a Class A station and because it is a stand-alone station at a time when multiple ownership, consolidation, and heavy market power are the watchwords of the industry. This small, minority-owned business serving the minority community has encountered regulatory obstacles to the detriment of its community, while one of the non-minority stations that is an obstacle to KJLH's power increase has twice been authorized to exceed normal Class B limits, and the other obstacle station has been allowed to muzzle KJLH's owner by invoking the *ex parte* rules. This rather arbitrary situation would not be necessary or possible with the abolition of the second- and third-adjacent channel spacing requirements for grandfathered short-spaced stations. Adoption of the proposal would clearly be in the public interest, and

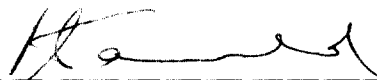
^{7/} Taxi is 100% owned by Stevland Morris, popularly known as entertainer Stevie Wonder.

certainly, as demonstrated by Taxi's experience, helpful to small business in the spirit of Section 257 of the Telecommunications Act of 1996


8. Conclusion. Taxi submits that the Commission's proposal to eliminate the second- and third-adjacent channel spacing requirements for grandfathered short-spaced stations will result in more efficient, equitable regulation by deleting an ineffective rule which is no longer relevant or needed, given advances in both transmitter and receiver technology since the rule was originally adopted. Accordingly, Taxi urges the Commission to eliminate the second- and third-adjacent channel restrictions for facilities improvements for grandfathered short-spaced stations -- especially Class A stations -- promptly.^{8/}

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Respectfully submitted,



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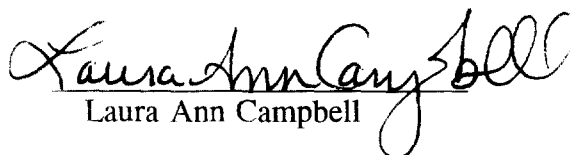
^{8/} Taxi has no objection to the alternative mentioned at par. 26 of the NPRM, which would eliminate second- and third-adjacent channel constraints for stations whose transmitter sites are within the 1 mV/m contour of short-spaced stations and would remain within that 1 mV/m contour.

CERTIFICATE OF SERVICE

I, Laura Ann Campbell, do hereby certify that I have, this 22nd day of July, 1996, caused to be sent by first class United States mail, postage prepaid, copies of the foregoing "Comments of Taxi Productions, Inc." to the following:

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